

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BRENDAN J. BERGER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 1:19-cv-00099-SJD
	:	
NATIONAL BOARD OF MEDICAL	:	Judge: Hon. Susan J. Dlott
EXAMINERS,	:	
	:	
Defendant.	:	

PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff, Brendan J. Berger (Mr. Berger) presents herein this Motion for Preliminary Injunction, Brief, Declarations and Exhibits in support thereof and prays as follows:

1. Plaintiff commenced a civil action (“Complaint”) on February 7, 2019 against the National Board of Medical Examiners (NBME) for violations of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12101, et. seq. The Complaint is incorporated herein by reference as if set forth fully herein at length.
2. Plaintiff is requesting appropriate accommodations when taking the United States Medical Licensing Exam (USMLE) Step 2 Clinical Knowledge (CK) by August 28, 2019 because he is impaired by Specific Learning Disorder with impairments in reading and written expression and Attention Deficit Hyperactivity Disorder (ADHD).
3. Plaintiff is a person with disabilities and is substantially limited in the major life activities of thinking, learning, reading, writing, concentrating, spelling and test taking, which are activities necessary to take the USMLE under standard conditions.

4. On or about October 3, 2013, Plaintiff provided Defendant with considerable documentation including current and prior psychoeducational evaluations and reports and further documentation which establishes that he is a person with disabilities and that he has received accommodations of extended time on tests throughout his education and on standardized exams. Mr. Berger requested an accommodation of time and half (50%) extended time.

5. By letter dated December 23, 2013, the NBME denied that Mr. Berger is a person with disabilities and rejected Plaintiff's request for accommodation.

6. On or about March 18, 2015, Mr. Berger submitted to Defendant additional documentation supporting his request for accommodations for the USMLE Step 2 CK.

7. By letter dated July 24, 2015, for the second time, the NBME denied that Mr. Berger is a person with disabilities and rejected Plaintiff's request for accommodation.

8. On or about February 24, 2018, Mr. Berger submitted another request including additional documentation supporting his request for accommodations on the USMLE Step 2 CK. Mr. Berger requested the accommodations of 100% extended time over two days of testing, a test reader or recording, extra break time and distraction limited testing environment.

9. By letter dated May 27, 2018 Defendant NBME, for the third time, denied Mr. Berger's request for accommodations.

10. Plaintiff, pursuant to Fed. R. Civ. P. 65, respectfully moves this Honorable Court to grant a preliminary injunction requiring Defendant to provide him with the appropriate testing accommodations of 100% extended time over two days of testing, extra break time and distraction limited testing environment on all sections of the USMLE Step 2 CK.

11. Because Plaintiff must take the USMLE Step 2 CK by August 28, 2019, in order to advance in medical school and to participate in the next residency match and because of the

extreme prejudice and irreparable harm that Plaintiff will suffer if he is not accommodated on the USMLE Step 2 CK, he now seeks an Order from this Court granting his motion to compel the Defendant to provide the requested appropriate accommodations.

12. There is no adequate relief available at law.

13. In support of this Motion, Plaintiff submits the annexed Memorandum; Declaration and Exhibits, which are incorporated by reference.

WHEREFORE, Mr. Berger requests that his Motion be granted and that the Court issue a preliminary injunction against Defendant compelling that Defendant to provide appropriate accommodations to Mr. Berger to include 100% extended time over two days of testing, extra break time and distraction limited testing environment.

Respectfully submitted

/s/ Charles Weiner
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Attorneys for Plaintiff, Brendan Berger

Date: July 3, 2019

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Courts using the Court's CM/ECF system which will send notification of such filing to the counsel of record on this 3rd day of July, 2019.

By: /s/ August T. Janszen